

2/22/10 (7)

TOWN OF ACTON

Memo

To: Board of Selectmen
From: Steven L. Ledoux, Town Manager
CC:
Date: February 18, 2010
Re: Piper Lane Remedies

BACKGROUND

The property at 8 Piper Lane was acquired by the Town through CPA proceeds on February 20, 2009. At the Town Meeting that authorized acquisition, Town Meeting was told by the Open Space Committee that the house would be sold to offset the purchase price of \$650,000

ISSUES WITH SELLING THE HOUSE

The property, consisting of two record parcels, has always been in single ownership. Although it has a house on it, it has no legal frontage. The Acton zoning bylaw requires that a buildable lot must have a certain minimum frontage. The property with the house on it existed without frontage before Acton adopted zoning in 1953. Therefore, the property with the house on it and consisting two record parcels as it has existed since before 1953 has a preexisting nonconforming status as to zoning; can without question continue to exist legally as long as no boundaries change; must be considered a single lot for zoning purposes; and cannot be reduced in area unless the house is removed. Furthermore, access to the property is over a narrow, poorly maintained private way, Piper Lane, which does not qualify as a street for purposes of zoning. The record easement for the private way is very narrow. The private way appears to be located partially outside its record easement. It appears that the private way cannot be modified, laid out, or improved in conformance with the Town's subdivision rules and regulations to make it a street for purposes of creating minimum frontage for the property, without creating zoning setback violations on the subject property and causing the need for takings from other properties along Piper Lane. All these factors combined, make it impossible to follow through on the intent of the original article to simply reconfigure the property within its own borders in order to create a legal saleable house lot apart in ownership from the open space conservation land portion of the property.

POSSIBLE REMEDIES

Two remedies can be pursued:

Option 1 Sell and convey the entire undivided land to a new owner.

This will maintain single undivided ownership of both record parcels without changes in boundaries or reduction in land area allowing the continued legal existence of the nonconforming property with the house. With the sale of this property the Town together with the State and, optional, a third entity will retain a strict perpetual conservation restriction that assures the protection of the land for conservation purposes and that meets the requirement of the Community Preservation Act. Because the Town is the seller, it can craft a conservation restriction that is strict and comprehensive and therefore as good and with the same effect as if the Town were to own the conservation restricted land. A house lot size portion surrounding the existing house and improvements would be exempt from the strict terms of the conservation restriction in order to fulfill the intent of the original article to have a saleable house and to return the proceeds from the sale to the Community Preservation Fund Open Space Set-Aside. As required under the original vote, the house will be subject to a historic preservation restriction. In addition, the Town will retain a broad public access easement on the conservation restricted portion of the property, including the right to build trails, to ensure that Acton residents can use and enjoy it in the same manner as the adjacent Great Hill conservation area.

Option 2 Purchase additional land with sufficient frontage on a street and combine it with the house lot portion of the property to create a new legal lot under zoning. The Town could then retain outright ownership of the conservation restricted portion of the property. Such a purchase will not be eligible for funding from the Community Preservation Fund or its Open Space Set-Aside.

Please see Attachment 1 for Draft Articles. Attachment II is the value of the parcel at 6 Piper Road, which would give the Piper Lane property frontage. CPA funds could not be used for this acquisition,

ISSUES FOR CONSIDERATION

Clearly, either option will take a great deal of explanation at Town Meeting. In my mind, one of the main factors to consider is the impact of either option on the potential resale of the house.

In a discussion with Jonathon Avery, his opinion is that Option 2 would broaden the market for potential buyers. Selling property with an existing Conservation Restriction would appeal to a very narrow, limited group of buyers.

That being said, the Town would have to come up with General Funds for the purchase and the cost of the additional land may not be recouped in the selling price.

This really comes down to a policy decision of how quickly the Town wishes to sell the house. If the answer is sooner than later, purchasing frontage on Piper Road is the solution. If waiting for the right buyer is the answer, Option 1 is the way to go. It should be noted we have not engaged in discussions with the owner of the Piper Road parcel.

Steve Ledoux

From: Roland Bartl
Sent: Wednesday, May 06, 2009 3:01 PM
To: Bruce Stamski; Corey York; Steve Ledoux
Subject: Emailing: StreetPhotos of Piper Lane

Some sample photos of Piper Lane







ARTICLE – PIPER LANE OPTION 1
(Majority vote)

8 PIPER LANE PARCEL – OPTION 1
AMEND PREVIOUS TOWN MEETING ACTION

To see if the Town will vote to amend the vote taken on Article 2 of the October 2, 2008 Special Town Meeting by adding the following paragraph (j):

- (j) Or, sell and convey the entire property consisting of parcels 4 and 4-1 as shown on Assessors' Map H3A on such terms and conditions and for such consideration as the Selectmen may determine which consideration shall be no less than the appraised value of the entire property, and subject to:
- (1) A perpetual Historic Preservation Restriction and/or a perpetual Conservation Restriction on approximately the portion of the property consisting of the land, buildings and improvements cited in paragraph (e) of this article on such terms and conditions as the Selectmen may determine, and
 - (2) A perpetual Conservation Restriction and Public Access Easement on the remainder of the property, being approximately the portion of the land to join the Great Hill conservation area cited in paragraph (f) of this article on such terms and conditions as the Selectmen may determine; with said Conservation Restriction to be enforceable by the Town and by the Commonwealth of Massachusetts, and, if elected by the Board of Selectmen, by a nonprofit, charitable corporation or foundation as determined by the Selectmen;

And, transfer the net proceeds of such sale of the entire property from the general fund to the Community Preservation Fund Open Space Set-Aside.

, or take any other action relative thereto.

SUMMARY

This article amends the action taken on Article 2 of the October 2, 2008 Special Town Meeting. The vote authorized the use of the Community Preservation Fund Open Space Set-Aside to purchase from one owner (Gaebel) a +/-5.9 acre property, consisting of two record parcels (assessors' map H3A parcels 4 and 4-1) at 8 Piper Lane in South Acton, which land also contained a house and associated improvements. The action contemplated and authorized the reconfiguration of the two parcels that comprise the property so as to sell the house separately on a legal conforming house lot while retaining in Town ownership the majority of the property for open space conservation purposes. The abstract of said Article 2 follows bracketed in between the lines below:

ARTICLE 2
(2/3 vote required)

**COMMUNITY PRESERVATION FUND – APPROPRIATIONS
FROM EXISTING OPEN SPACE SET-ASIDE (PIPER LANE
PARCELS) AND RELATED ACTIONS**

To see if the Town will vote to:

- (a) authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise, on such terms and conditions as the Selectmen may determine, two parcels of land with the buildings and improvements thereon depicted on Assessors' Map H3A as parcels 4 and 4-1, consisting respectively of approximately 5.51 acres of forested open space abutting the Great Hill Conservation Area and approximately 17,325 square feet of land with a 3-bedroom residential structure built *circa* 1840;
- (b) transfer, appropriate and expend, pursuant to the favorable recommendation of the Community Preservation Committee from the existing Open Space Set Aside portion of the Community Preservation Fund balance a sum not to exceed \$730,000 toward the purchase and restriction thereof consistent with this article;

- (c) raise, appropriate, transfer from available funds or accept gifts of such additional funds as are necessary to accomplish the purposes of this article;
- (d) authorize the Board of Selectmen to reconfigure the area and lot lines of parcels 4 and 4-1 and to take all other necessary actions so as to render reconfigured parcel 4-1 conforming to zoning or otherwise lawful for continued single family residential use (the "House Lot");
- (e) authorize the Board of Selectmen to impose a perpetual Historic Preservation Restriction and/or a perpetual Conservation Restriction on all or a portion of the land, buildings and improvements comprising the House Lot on such terms and conditions as the Selectmen may determine;
- (f) authorize the Board of Selectmen to impose a perpetual Conservation Restriction on such terms and conditions as the Selectmen may determine on the entire remainder of parcels 4 and 4-1 (if any) not made part of the House Lot so as to protect and preserve said land as part of the Great Hill conservation area in perpetuity, with said restriction to be enforceable (in addition to the Town) by the commonwealth or by a nonprofit, charitable corporation or foundation as determined by the Selectmen (the "Conservation Land");
- (g) transfer the restricted House Lot from the Board of Selectmen to Board of Selectmen for the purposes of sale and sell and convey the restricted House Lot on such terms and conditions and for such consideration as the Selectmen may determine which consideration shall be no less than the appraised value of the restricted House Lot;
- (h) transfer the net proceeds of such sale of the restricted House Lot from the general fund to the Community Preservation Fund Open Space Set-Aside; and
- (i) authorize the Board of Selectmen to delegate the management of the Conservation Land to the Conservation Commission subject to the perpetual Conservation Restriction as aforesaid; or take any other action relative thereto.

Mr. Ken Sghia-Hughes moves that the Town authorize the transfer, acceptance, raising, appropriation, and expenditure of the funds and the acquisition, reconfiguration, restriction, transfer, delegation and conveyance of the real property as set forth in the Article.

MOTION CARRIES (MODERATOR DECLARED 2/3 VOTE)

The property, consisting of two record parcels, has always been in single ownership. Although it has a house on it, it has no legal frontage. The Acton zoning bylaw requires that a buildable lot must have a certain minimum frontage. The property with the house on it existed without frontage before Acton adopted zoning in 1953. Therefore, the property with the house on it and consisting two record parcels as it has existed since before 1953 has a preexisting nonconforming status as to zoning; can without question continue to exist legally as long as no boundaries change; must be considered a single lot for zoning purposes; and cannot be reduced in area unless the house is removed. Furthermore, access to the property is over a narrow, poorly maintained private way, Piper Lane, which does not qualify as a street for purposes of zoning. The record easement for the private way is very narrow. The private way appears to be located partially outside its record easement. It appears that the private way cannot be modified, laid out, or improved in conformance with the Town's subdivision rules and regulations to make it a street for purposes of creating minimum frontage for the property, without creating zoning setback violations on the subject property and causing the need for takings from other properties along Piper Lane. All these factors combined, make it impossible to follow through on the intent of the original article to simply reconfigure the property within its own borders in order to create a legal saleable house lot apart in ownership from the open space conservation land portion of the property. Two remedies can be pursued:

- Option 1 Sell and convey the entire undivided land to a new owner. This will maintain single undivided ownership of both record parcels without changes in boundaries or reduction in land area allowing the continued legal existence of the nonconforming property with the house. With the sale of this property the Town together with the

State and, optional, a third entity will retain a strict perpetual conservation restriction that assures the protection of the land for conservation purposes and that meets the requirement of the Community Preservation Act. Because the Town is the seller, it can craft a conservation restriction that is strict and comprehensive and therefore as good and with the same effect as if the Town were to own the conservation restricted land. A house lot size portion surrounding the existing house and improvements would be exempt from the strict terms of the conservation restriction in order to fulfill the intent of the original article to have a saleable house and to return the proceeds from the sale to the Community Preservation Fund Open Space Set-Aside. As required under the original vote, the house will be subject to a historic preservation restriction. In addition, the Town will retain a broad public access easement on the conservation restricted portion of the property, including the right to build trails, to ensure that Acton residents can use and enjoy it in the same manner as the adjacent Great Hill conservation area.

- Option 2 Purchase additional land with sufficient frontage on a street and combine it with the house lot portion of the property to create a new legal lot under zoning. The Town could then retain outright ownership of the conservation restricted portion of the property. Such a purchase will not be eligible for funding from the Community Preservation Fund or its Open Space Set-Aside.

This article proposes implementation of Option 1. The next article presents the alternative Option 2.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 264-9636
Selectman assigned: – E-mail: bos@acton-ma.gov

Board of Selectmen:
Finance Committee:

ARTICLE – PIPER LANE OPTION 2

(Two-thirds vote)

8 PIPER LANE PARCEL – OPTION 2 PURCHASE PARCEL AT 6 PIPER ROAD

To see if the Town will authorize the Board of Selectmen to acquire by purchase, gift or eminent domain or otherwise and to accept the deed of a fee simple interest, on such terms and conditions as the Selectmen may determine, of the vacant land located at and known as 6 Piper Road in South Acton, shown as Parcel 18-1 on Acton Assessors' Map H-3A, containing +/-20,120 square feet of land, and being a portion of the land described in the deed recorded in the Middlesex South Registry of Deeds at Book 18551, Page 149, and further to see if the Town will raise, appropriate, or transfer from available funds the sum of \$33,000, or accept gifts for this purpose, or take any other action relative thereto.

SUMMARY

This article would allow implementation of the Option 2 described in the summary of the foregoing article. After acquiring this parcel of land it can be combined with a portion of the adjacent land at 8 Piper Lane, which the Town purchased in early 2009. The October 2, 2008 Special Town Meeting (Article 2) had authorized the use of the Community Preservation Fund Open Space Set-Aside for its purchase. The action had contemplated and authorized the reconfiguration of the two parcels that comprise the property so as to sell the house separately on a legal conforming house lot while retaining in Town ownership the majority of the property for open space conservation purposes. For reasons stated in the summary of the foregoing article it is not possible to follow through with the October 2, 2008 Special Town Meeting intent and accomplish the reconfiguration within the borders of the property itself.

The 6 Piper Road parcel has +/-20,120 square feet of land and +/-121 feet of frontage on Piper Road. If purchased, it can be combined with an additional +/-20,000 square feet of land from the Town's 8 Piper Lane property to form a new legal, conforming, and saleable lot with the existing house on it, in conformance with the intent of the October 2, 2008 Special Town Meeting vote.

The purpose of acquiring 6 Piper Lane is to create a legal, conforming, saleable lot with a house on it. Therefore, this purchase cannot be funded with Community Preservation Funds whose purposes are for open space, community housing, historic preservation, and recreation.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 264-9636
Selectman assigned: – E-mail: bos@acton-ma.gov

Board of Selectmen:

Finance Committee:

AVERY ASSOCIATES

REAL ESTATE APPRAISERS - COUNSELORS
December 23, 2009

Attachment II

282 CENTRAL ST.
P.O. BOX 834
ACTON, MA 01720
TEL: 978-263-5002
FAX: 978-635-9435
info@averyandassociates.com

Steven L. Ledoux, Town Manager
Town Manager
472 Main Street
Acton, MA 01720

Re: 6 Piper Road
Acton, Massachusetts

Dear Mr. Ledoux:

In fulfillment of our agreement, we are pleased to transmit the attached appraisal report detailing our estimate of the market value of the fee simple interest in the above referenced real property. We have personally inspected the property and made investigations and analysis pertinent to the value estimate contained in the accompanying report.

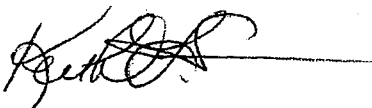
The subject property is a parcel of vacant land identified as Parcel 18-1 on Assessor's map H3A. It contains 20,210 square feet and has frontage on Piper Road. It is classified as a nonbuildable residential parcel under the current zoning requirements of the town.

By reason of our investigations, experience and judgment, and subject to the Assumptions and Limiting Conditions set forth in the attached report, it is our opinion that the market value of the subject property as of December 17, 2009, is.

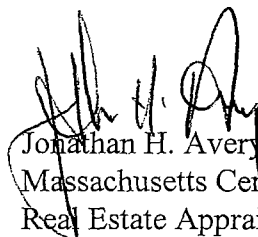
(THIRTY THREE THOUSAND (\$33,000) DOLLARS

This letter must remain attached to the report, which contains 20 pages plus related exhibits, in order for the value opinion set forth to be considered valid.

Respectfully submitted,



Keith Shoneman, SRA
Massachusetts Certified Residential
Real Estate Appraiser #70844



Jonathan H. Avery, MAI
Massachusetts Certified General
Real Estate Appraiser #26